

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

v.

MICHAEL REGAN,

Defendants.

20-MJ-183-HKS

NOTICE OF MOTION

MOTION BY:

Fonda Dawn Kubiak Assistant Federal
Public Defender, Attorney for
Michael Regan.

DATE, TIME & PLACE:

Before the Honorable H. Kenneth
Schroeder, Jr., United States Magistrate
Judge, Robert H. Jackson United States
Courthouse, 2 Niagara Square, Buffalo, New
York 14202 **on the papers.**

SUPPORTING PAPERS:

Affirmation of Fonda Dawn Kubiak, dated
January 28, 2021.

RELIEF REQUESTED:

Set a Rule 48(b) date in sixty (60) days.

DATED:

January 28, 2020, Buffalo, New York.

Respectfully submitted,

/s/Fonda Dawn Kubiak

Fonda Dawn Kubiak
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Federal Public Defender's Office
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Buffalo, New York 14202
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fonda_kubiak@fd.org
Attorney for Michael Regan

TO: Jonathan Cantil
Assistant United States Attorney

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

20-MJ-183-HKS

v.

AFFIRMATION

MICHAEL REGAN,

Defendants.

FONDA DAWN KUBIAK, ESQ., affirms under penalty of perjury that:

1. I am an attorney with the Federal Public Defender's Office located at 300 Pearl Street, Suite 200, Buffalo, New York 14202, and I represent the defendant, Michael Regan, in the instant matter.

2. Mr. Regan was charged by way of a Criminal Complaint. *See* Dkt. No. 1.

3. At the initial appearance, he waived his right to a preliminary hearing as the government indicated that it is already in the process of providing him with pre-indictment discovery. The government now has until February 12, 2021, to indict the case per 18 U.S.C. § 3161(b).

4. Defense counsel for both received the discovery sent by the government. The discovery is voluminous. Mr. Regan is also housed in Niagara County Jail which is presently locked down due to a COVID-19 outbreak and counsel has not been able to review the discovery with him.

5. In addition, that parties have discussed the possibility of a pre-Indictment resolutions that may be available. The government also indicated that in addition to that, certain resolutions are likely unavailable, should the case be presented to the grand jury.

6. I will not be able to meaningfully review the discovery and communicate with Mr. Regan prior to the current 48(b) date, and should the case have to be presented to the grand jury without defense counsels' ability to review the discovery and explore a more favorable pre-Indictment disposition, would result in Mr. Regan receiving ineffective assistance of counsel during the plea bargaining stage of litigation. *See generally, Lafler v. Cooper*, 566 U.S. 156 (2012); *Missouri v. Frye*, 566 U.S. 134 (2012).

7. Based on the foregoing, the defense respectfully requests that this Court set a Rule 48(b) date, whereupon the criminal complaint will be dismissed, in approximately sixty (60) days.

8. The government does not object to this request.

9. Should a Rule 48(b) date be set, the parties agree that the Speedy Trial Act time is excluded from the filing of this motion to the Rule 48(b) date.

WHEREFORE, the defendant, Michael Regan, respectfully requests a Rule 48(b) date in approximately sixty (60) days.

DATED: January 28, 2020, Buffalo, New York.

Respectfully submitted,

/s/Fonda Dawn Kubiak

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